UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

AMERICAN FAMILY MUTUAL INSURANCE COMPANY,	)	
Plaintiff,	)	
v.	)	Cause No.
NANCY SPENCER,	)	
Serve at: 4552 Kerth Forest Drive St. Louis, Missouri 63128	)	

COMPLAINT FOR DECLARATORY JUDGMENT – INSURANCE POLICY

COMES NOW Plaintiff American Family Mutual Insurance Company ("American Family") and for its cause of action against Defendant Nancy Spencer (hereinafter "Defendant") states and alleges as follows:

1. Plaintiff American Family is an insurance company incorporated under the laws of the State of Wisconsin, presently in good standing in the State of Missouri, and is lawfully engaged in the insurance business in the State of Missouri.

2. Plaintiff American Family's principal place of business is located in the State of Wisconsin at 6000 American Parkway, Madison, Wisconsin 53783.

3. Upon information and belief, Defendant Nancy Spencer is a citizen of Missouri, and resides at 4552 Kerth Forest Drive, St. Louis, Missouri 63128.

4. Since Plaintiff American Family is a citizen of Wisconsin and Defendant Nancy Spencer is a citizen of Missouri, diversity jurisdiction exists in this case.

5. There is a current case and controversy between the parties to this action. This Complaint for Declaratory Judgment is initiated pursuant to Rule 57 and the Federal Declaratory Judgment Act, codified at 28 U.S.C. § 2201, to obtain a declaration of American Family Mutual Insurance Company's legal obligations under insurance policies issued to Nancy Spencer.

6. This Court has original jurisdiction over this matter under 28 U.S.C. § 1332(a) because it is a civil action between citizens of different states and the amount in controversy exceeds $75,000, exclusive of interest and costs.

7. Venue is proper in the United States District Court for the Eastern District of Missouri under 28 U.S.C. § 1391(b)(1) and Local Rule 3-2.07 because Defendant resides within the Eastern Division of the Eastern District of Missouri. Further, venue is proper in the Eastern Division of the Eastern District of Missouri because a substantial part of the events or omissions giving rise to the claim occurred in St. Louis County, Missouri.

8. That under a policy of homeowners insurance known as Policy No. 24PW6856-01 ("Policy"), American Family insured Defendant providing liability coverage in the amount of $300,000 under the terms, conditions, and endorsements as contained within said Policy. Said Policy had policy period effective dates of July 31, 2014 to December 25, 2014. A copy of said Policy is attached as Exhibit 1 and incorporated by reference.

9. That Defendant Nancy Spencer is likewise a defendant in litigation known as ***Jane Volz v. Nancy Spencer, et. al.***, Case No. 16SL-CC01253, filed in the Circuit Court of St. Louis County, Missouri. A copy of the Petition is attached hereto, known as Exhibit 2, and incorporated herein by reference and is hereinafter known as "Litigation."

10. That within said underlying Litigation, Defendant Nancy Spencer is subject to claims for fraudulent misrepresentation, negligent misrepresentation, and violations of the

Missouri Merchandising Practices Act, in connection with the sale of the Defendant's St. Louis County home, to the underlying Plaintiff.

11. That American Family has been called upon to provide indemnification and a defense to Defendants in said underlying Litigation.

12. That the Policy identified as Exhibit 1 contains the following relevant language:

DEFINITIONS

The following words in this policy have defined meanings.
They will be printed in bold type.

1. **Bodily injury** means bodily harm, sickness or disease. It includes resulting loss of services, required care and death.
Bodily injury does not include:

c. emotional or mental distress, mental anguish, mental injury, or any similar injury unless it arises out of actual bodily harm to the person.

9. **Occurrence** means an accident, including exposure to conditions, which results during the policy period, in:

a. **bodily injury**; or
b. **property damage**.
Continuous or repeated exposure to substantially the same general harmful conditions is considered to be one **occurrence**.

11. **Property damage** means physical damage to or destruction of tangible property, including loss of use of this property. Loss of use of tangible property does not include any resulting loss of value of such damaged property.

LIABILITY COVERAGES - SECTION II
COVERAGE D - PERSONAL LIABILITY COVERAGE

We will pay, up to **our limit**, compensatory damages for which any **insured** is legally liable because of **bodily injury** or **property damage** caused by an **occurrence** covered by this policy.

Defense Provision.

If a suit is brought against any **insured** for damages because of **bodily injury** or **property damage** caused by an **occurrence** to which this policy applies, **we** will provide a defense at

our expense by counsel of **our** choice. **We** will defend any suit or settle any claim for damages payable under this policy as **we** think proper.
OUR OBLIGATION TO DEFEND ANY CLAIM OR SUIT ENDS WHEN THE AMOUNT **WE** HAVE OFFERED OR PAID FOR DAMAGES RESULTING FROM THE **OCCURRENCE** EQUALS **OUR LIMIT.**

EXCLUSIONS - SECTION II
Coverage D - Personal Liability and Coverage E – Medical Expense do not apply to:

10. **Intentional Injury**. **We** will not cover **bodily injury** or **property damage** caused intentionally by or at the direction of any **insured** even if the actual **bodily injury** or **property damage** is different than that which was expected or intended from the standpoint of any **insured**.

14. **Premises Owned, Rented or Controlled**. **We** will not cover **bodily injury** or **property damage** arising out of any act or omission occurring on or in connection with any premises owned, rented or controlled by any **insured** other than an **insured premises**.

Coverage D - Personal Liability does not apply to:

1. **Contractual Liability**. **We** will not cover personal liability under any contract or agreement.
This exclusion does not apply to written contracts:

a. directly relating to the ownership, maintenance or use of the **insured premises** not excluded in 2 below or elsewhere in this policy; or
b. in which the **insured** assumes the liability of others prior to the **occurrence**.

3. **Property Owned or Controlled**. **We** will not cover **property damage** to:

a. property owned by any **insured**;
b. property borrowed, used or occupied by, rented to or in the care of any **insured**; or
c. property owned by a corporation or association of property owners of which any **insured** is a member.

We will, if any **insured** is legally obligated, pay for **property damage** to item b above caused by fire, smoke or explosion.

4. **Punitive Damages**. **We** will not cover punitive or exemplary damages.

DEFINITIONS

The following words in this policy have defined meanings.
They will be printed in bold type.

5. **Insured**

a. **Insured** means **you**

6. **Insured premises**

a. Described Location:

(1) If **you** own the one or two family dwelling described in the Declarations, the **insured premises** means: that dwelling, related private structures and grounds at that location where **you** reside;

(2) If **you** own the townhouse or row house at the location described in the Declarations, the **insured premises** are: that townhouse or row house, related private structures and grounds used or occupied solely by **your** household for residential purposes at that location.

b. For Personal Liability and Medical Expense Coverages, **insured premises** also include:

(1) other premises listed in the Declarations;
(2) the part of any residential premises **you** acquire for **your** occupancy during the policy period if **we** are notified within 30 days following the date **you** acquired such premises;
(3) vacant land (other than farm land) owned by or rented to an **insured**. This includes land on which a one or two family dwelling is being built for the personal use of an **insured**;
(4) an **insured**'s individual or family cemetery lots and burial vaults;
(5) the part of any residential premises not owned by an **insured**, while an **insured** is temporarily residing there; and
(6) any premises **you** use in connection with the described location.

c. For Personal Liability Coverage:
The **insured premises** also includes any other premises which an **insured** may occasionally rent for other than **business** purposes.

14. **You** and **your** refer to the person or people shown as the named **insured** in the Declarations. These words also refer to **your** spouse who is a resident of **your** household.

FUNGI OR BACTERIA EXCLUSION ENDORSEMENT
This endorsement modifies such insurance as is afforded by this policy and replaces any Fungi or Bacteria Exclusion Endorsement previously a part of this policy.
This policy is amended as follows:

DEFINITIONS

The following definition is added:
Fungi means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.

EXCLUSIONS – SECTION II

The following exclusion is added under **Coverage D – Personal Liability and Coverage E – Medical Expense** do not apply to:

Fungi or Bacteria. We will not cover **bodily injury** or **property damage,** arising out of or resulting from, in whole or in part, any actual, alleged or threatened ingestion of, inhalation of, contact with, exposure to, existence of, or presence of, any **fungi** or bacteria on or within a building or structure, including its contents. Such loss is excluded regardless of any other cause, event, material or product contributing concurrently or in any sequence to such injury or damage.

We will not pay for any loss, cost or expense to abate, test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, remediate, dispose of or in any way respond to, or assess the effects of **fungi** or bacteria, by any **insured** or by any other person or entity.
This exclusion does not apply to **bodily injury** or **property damage** arising out of any **fungi** or bacteria that are, are on, or are contained in, a good or product intended for consumption.
All other terms remain unchanged.

MISSOURI AMENDATORY HOMEOWNERS ENDORSEMENT

This endorsement modifies such insurance as is afforded by this policy and replaces any Missouri Amendatory Homeowners Endorsment previously a part of this policy.
This policy is amended as follows:

LIABILITY COVERAGES – SECTION II

The following applies to all policies:

Under:
COVERAGE D – PERSONAL LIABILITY COVERAGE:
EXCLUSIONS – SECTION II
The following applies to all policies:
Under:

Coverage D – Personal Liability and Coverage E – Medical Expense do not apply to:

Intentional Injury is deleted and replaced by the following:
Expected or Intended. We will not cover **bodily injury** or **property damage** arising out of an expected or intended act or omission.

a. This includes any type of **bodily injury** or **property damage** that an **insured:**

(1) intends; or
(2) may expect to result from any intentional act or omission.

b. This exclusion applies even if the **bodily injury** or **property damage** is:

(1) of a different kind, quality, or degree than intended;
(2) to a different person or property than intended;
(3) the result of a willful and malicious act, no matter at whom the act was directed;
(4) unexpected or unforeseen by the person injured or the owner of the property damaged; or
(5) sustained regardless of whether an **insured:**
(a) is under the influence of alcohol or any controlled substance;
(b) lacks the mental capacity to govern his or her conduct; or
(c) is deemed not to have the mental capacity to form the legal intent to commit the act or omission.

c. This exclusion applies regardless of the theory of relief pursued, asserted, or claimed by anyone seeking compensation under this policy.

Under:
Coverage D – Personal Liability does not apply to:
Punitive damages is deleted and replaced by the following:

Punitive, statutorily Imposed, or Court Ordered Damages. We will not cover punitive, statutorily imposed, or court ordered damages.
This includes any Personal Liability for:
a. punitive, exemplary, statutorily imposed, multiple, or aggravated damages;
b. fines, penalties, or court ordered restitution; or
c. awarded or statutorily mandated attorney fees related to a. or b. above.

15. That Policy No. 24PW6856-01 does not provide liability coverage for the allegations and damages asserted in the underlying litigation in that: (a) the loss set forth in the underlying Petition does not meet the definitions of "bodily injury" and "property damage"; (b) the loss set forth in the underlying Petition is specifically excluded by the Policy's exclusions cited above; and (c) the Petition in the underlying litigation does not allege an occurrence as defined by the Policy.

16. That this court is empowered to declare the rights and obligations of Plaintiff American Family under the Policy; that Plaintiff American Family is entitled to judgment declaring that no coverage exists for any liability of Defendant Spencer arising out of the action filed by the Underlying Plaintiff against Defendant Spencer as asserted in the underlying Litigation; that no coverage exists for any claims arising out of the underlying Litigation; that

Plaintiff American Family is not liable under the policy previously identified as Exhibit 1 to Defendant Spencer under the liability portions of said policy; and that Plaintiff American Family has no obligation to defend Defendant Spencer in the underlying Litigation filed by the Underlying Plaintiff or in any other action arising out of the claims referenced in the underlying Litigation or that Plaintiff American Family has the duty to investigate, pay costs or expenses of Defendant Nancy Spencer in any litigation or claim arising out of the circumstances previously set forth.

WHEREFORE, Plaintiff American Family Mutual Insurance Company respectfully prays this Honorable Court issue its order declaring that no coverage exists under Policy No. 24PW6856-01 for any liability of Defendant Spencer which may be found against Defendant Spencer in any present or future claim or litigation arising out of the incidents more particularly described in the underlying Litigation known as ***Jane Volz v. Nancy Spencer, et. al.***, Case No. 16SL-01253, filed in the Circuit Court of St. Louis County, Missouri; that Plaintiff American Family Mutual Insurance Company is not liable to Defendant Spencer under the aforementioned insurance policy; that Plaintiff American Family Mutual Insurance Company is not liable under the Policy previously identified to defend, investigate, pay costs or expenses of Defendant Spencer in any present or future claim or litigation filed by the Underlying Plaintiffs; and that Plaintiff American Family Mutual Insurance Company further prays for its costs and attorneys' fees expended herein along with any such further orders this Honorable Court deems just and proper under the circumstances.

/s/Sean P. Dolan
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